In the High Court of Punjab and Haryana at Chandigarh

C.W.P.No.17135 of 2007
Date of decision: November 6, 2007

Central Bank of India, Chandigarh

---Petitioner

Vs.

Debts Recovery Appellate Tribunal, New Delhi and others

---Respondents

Coram: **HON'BLE MR. JUSTICE M.M.KUMAR**
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr.Atul Sharma, Advocate,
for the petitioner.

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M.M.KUMAR, J.

Order dated 26.3.2007 passed by the Debts Recovery Appellate Tribunal, New Delhi (for brevity 'the Tribunal) is the subject matter of challenge in this petition filed under Article 226 of the Constitution. The Tribunal has noticed the factum of order passed by Hon'ble the Supreme Court on 18.4.2006 in Civil Appeal No. 213 of 2006 (P-1). According to the order passed by Hon'ble the Supreme Court, the respondent-company was to satisfy the requirement of pre deposit under Section 21 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993(for brevity 'the Act'). Accordingly, the appeal was disposed of directing the respondents to deposit under Section 21 of the Act a further sum of Rs. 4 crores within a period of six months from the date of the order i.e. 18.4.2006. On deposit of the amount the Tribunal was required to proceed to hear the appeal and then to dispose it off as bank was found keen to realise the amount due. Hon'ble the Supreme Court has

also exhorted the Tribunal to dispose of the appeal expeditiously. In the event of amount having not been deposited as per the directions, then it was open to the petitioner-bank to request the Tribunal to vacate the interim order passed in favour of the respondent staying the recovery. The period of six months expired on 18.10.2006 and an application was filed by the petitioner-bank for vacation of the stay order before the Tribunal. On the aforementioned application order dated 19.12.2006 was passed noticing that the amount of Rs. 4 crores as per the directions of Hon'ble the Supreme Court has not been paid and the order dated 11.5.2005 was vacated. Accordingly, Recovery Officer was permitted to proceed to execute the recovery certificate in accordance with law. However, an application was filed by the respondent seeking modification of the order dated 19.12.2006 by bringing several facts to the notice of the Tribunal and the Tribunal stayed the auction scheduled to be held on 2.4.2007 on the condition of applicants depositing a sum of Rs. 280 lacs on or before 7.3.2007 taking into consideration the deposit of Rs. 120 lacs made by the respondent on 5.1.2007. The Tribunal, however, observed that the respondent had committed fault in complying with the directions issued by Hon'ble the Supreme Court in its order dated 18.4.2006. However, noticing that the petitioner itself invited the respondent to settle the matter and some time was consumed in that process the Tribunal has taken the view that the petitioner-corporation could not set up the plea of default in depositing the amount before the Tribunal. It has been held that the respondent had not committed any default deliberately. The delay has occurred on account of legitimate expectation raised by the petitioner for settling the whole issue amicably, not that the respondent did not comply with the order passed by

Hon'ble the Supreme Court. The deposit has since been made and the order has been complied with as per requirement of Section 21 of the Act.

After hearing learned counsel, we are of the considered view that the Tribunal has opted to lean in favour of one view by exercising its discretion in favour of the respondents on the basis that the petitioner had invited the respondents to settle the matter and time was consumed in that process. We confronted the learned counsel for the petitioner with the aforementioned findings recorded by the Tribunal and he has not been able to controvert those facts. Once this factual finding of inviting the respondents, settling the matter amicably and delay in the process in depositing the amount of Rs. 4 crores has been accepted then the aforementioned period may have to be legitimately excluded from the period of six months from the date of the order i.e. 18.4.2006. It is undisputed that a sum of Rs. 120 lacs was deposited by the respondents on 5.1.2007 and the balance amount of Rs. 280 lacs was deposited on 7.3.2007. Therefore, we do not wish to interfere in the exercise of its discretion nor any sound basis has been provided by the learned counsel for the petitioner warranting our interference. The petition is wholly without merit and the same is accordingly dismissed.

(M.M.KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

NOVEMBER 6, 2007
paramjit/vimal